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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ARTAK DALDUMYAN, Plaintiff and Appellant, v. JONATHAN MEHRIAN, Defendant and Respondent.	B287713 (Los Angeles County Super. Ct. No. BC591130)

APPEAL from a judgment of the Superior Court of Los Angeles County. Randolph M. Hammock, Judge. Affirmed.

Law Office of Richard M. Foster, Richard M. Foster and Sylvia Sultanyan for Plaintiff and Appellant.

Albert & Will and Mitchell J. Albert for Defendant and Respondent.

Artak Daldumyan appeals from a judgment against him following the trial court's ruling granting summary judgment in favor of respondent Jonathan Mehrian. Daldumyan was an outside contractor affiliated with a multi-level financial services marketing company, World Financial Group (WFG). WFG terminated Daldumyan's contract, and Daldumyan invoked his arbitration rights under the contract. The arbitrators found that WFG breached its contract with Daldumyan and awarded Daldumyan over $5 million in damages.

Following that ruling, Daldumyan sued Mehrian, claiming that Mehrian caused the breach. Daldumyan claims that Mehrian interfered with his contractual relationship with WFG by influencing WFG executives to transfer commissions to him that should have been paid to Daldumyan, and by providing false information leading to WFG's decision to terminate Daldumyan's contract.

We affirm the judgment. In opposing Mehrian's summary judgment motion, Daldumyan failed to provide evidence sufficient to show that Mehrian caused WFG to breach the contract. Daldumyan provided no evidence of communications between Mehrian and WFG executives *before* the breach occurred. In addition, Daldumyan failed to show any particular false information that Mehrian allegedly provided to WFG or how that information affected WFG's decision to terminate Daldumyan's contract.

BACKGROUND

1. WFG's Business

WFG is a multi-level marketing company engaged in selling financial services such as insurance and securities. It contracts with "associates" who sell financial services and may

also recruit others to become associates. The recruited associates may then recruit others to become associates, creating a hierarchy. This hierarchy of recruited associates is known as an associate's "downline."

Associates earn commissions both from their own sales and from the sales of other associates in their downline. An "upline" associate earns more commission from the sales of downline associates who are closer to him or her in the hierarchy than from those who are farther down the line.

Associates must be licensed to sell the products that they offer. WFG has two sister companies that enable such licensing. World Financial Group Insurance Agency, Inc. (WFG Insurance) handles insurance, and Transamerica Financial Advisors, Inc. (Transamerica Financial) handles securities.

The relationship between WFG and its associates is governed by a contract called the Associate Membership Agreement (AMA). Daldumyan was a party to the AMA. He was also a party to a separate "Field Representative Agreement" with Transamerica Financial for the sale of securities.

Daldumyan first became an associate in 1996, and over time developed a substantial downline.[1] He also obtained authorizations to sell insurance provided by various other companies. Those authorizations were dependent upon Daldumyan's continuing status as an associate with WFG.

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[1] Daldumyan's initial contract was with another entity that subsequently assigned its interest to WFG. The prior company relationships are not material.

2. Events Underlying Daldumyan's Claims

Daldumyan's downline hierarchy included two brothers, Pedram Mehrian and respondent Jonathan Mehrian.[2] Mehrian was downline from Pedram.

On November 16, 2011, WFG terminated Pedram's associate contract because of criminal proceedings pending against him. WFG's usual procedure following termination of an associate's contract was to "roll up" that person's downline to the associate directly above. WFG initially followed that procedure after terminating Pedram's contract by rolling up his hierarchy to Daldumyan. However, several days later, WFG decided instead to roll Pedram's hierarchy down to Mehrian.

WFG based its decision on a general provision in the AMA stating that " 'if WFG determines that a transfer is necessary, in its sole discretion, WFG reserves the right to transfer any member at any time.' " Testimony that Mehrian submitted with his summary judgment motion explained that WFG's reason for transferring Pedram's downline to Mehrian was to "entrust [Pedram's] hierarchy to the safekeeping of his brother so that the hierarchy could be transferred back to [Pedram] with minimal business disruption in the event that he was exonerated."

Daldumyan complained about the roll-down to various WFG executives, including Kent Davies (the WFG Home Office Executive) and Xuan Nguyen, who was both an "upline and hierarchy leader" above Daldumyan in the hierarchy and a

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[2] Because they share a last name, we refer to Pedram Mehrian as "Pedram" and to respondent Jonathan Mehrian as "Mehrian."

member of the WFG Board of Directors. Davies attempted to negotiate a compromise in which only some of Pedram's associates would be rolled up to Daldumyan. Discussions continued over a period of months until Daldumyan learned in August 2012 that WFG was terminating his contract.

WFG's stated ground for the termination was Transamerica Financial's prior decision to terminate its Field Representative Agreement with Daldumyan. In support of his summary judgment motion, Mehrian submitted a declaration from the chief operating officer of Transamerica Financial, Dan S. Trivers, stating that Transamerica Financial began an investigation into Daldumyan's activities in around May 2012 "[o]n its own initiative, and pursuant to its regulatory obligations." Trivers explained that Transamerica Financial is obligated to investigate potential violations of the rules of the Financial Industry Regulatory Authority (FINRA) by its registered representatives. Those rules require written disclosure of outside business activities for which a representative will be compensated. Daldumyan's Field Representative Agreement required compliance with the FINRA rules.

According to Trivers, Transamerica Financial concluded that Daldumyan had violated FINRA rules by failing to provide written disclosure of his investment in and business affiliation with a bank (Golden State Bank), as well as investments in a timeshare and a real estate venture.

Daldumyan's termination from WFG not only caused Daldumyan to lose WFG commissions, but it had a "ripple effect," causing the termination of his authorization to sell other companies' products.

3. The Arbitration

Daldumyan initiated arbitration proceedings against WFG pursuant to an arbitration clause in the AMA (the Arbitration). Daldumyan claimed that WFG had no contractual right to (1) transfer Pedram's downline to Mehrian rather than to Daldumyan, or (2) terminate Daldumyan's contract with WFG. In November 2015, a panel of three arbitrators issued a ruling finding in favor of Daldumyan and against WFG on Daldumyan's claims for breach of contract and breach of the covenant of good faith and fair dealing.

With respect to the transfer of Pedram's downline, the arbitrators concluded that the general contract provision permitting WFG to transfer associates at its " 'sole discretion' " conflicted with more specific provisions requiring that the downline of associates with sufficient seniority (such as Pedram) be rolled up to the next highest associate. With respect to the termination of Daldumyan's contract, the arbitrators rejected WFG's defense that it was contractually entitled to terminate its relationship with Daldumyan based solely on Transamerica Financial's decision to terminate its Field Representative Agreement with Daldumyan.

WFG relied on a provision in the AMA that permitted termination of an associate's contract based upon " 'any breach of the Associate's contract(s) with any of the Preferred Companies.' " The arbitrators found that Transamerica Financial was not a " 'Preferred Company' " as defined in the AMA.

However, the arbitrators did *not* decide whether Transamerica Financial itself breached its agreement with Daldumyan by terminating his Field Representative Agreement.

The arbitrators specifically noted that "[t]he contract between [Transamerica Financial] and [Daldumyan] is not within the scope of this arbitration clause and [Transamerica Financial] is not a Party to this arbitration. The rights of the Parties under the [Transamerica Financial] contract are to be adjudicated in another forum as required."

The arbitrators awarded Daldumyan compensatory damages against WFG in the amount of $5,241,273.35 plus attorney fees. The arbitrators rejected Daldumyan's request for punitive damages.

4. Daldumyan's Complaint

Daldumyan's operative complaint in this action asserted two claims against Mehrian: (1) a claim for intentional interference with contractual relations; and (2) a claim for unfair competition under Business and Professions Code section 17200 et seq.[3] Both claims are based on allegations that Mehrian exerted influence that caused WFG to roll Pedram's hierarchy down to Mehrian rather than up to Daldumyan, and to terminate Daldumyan's contract with WFG. Mehrian's conduct allegedly involved soliciting support from other associates for the roll-down of Pedram's hierarchy and providing false information about Daldumyan "in an intentional and calculated effort at creating a false record to justify [Daldumyan's] termination and divestiture."

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[3] Subsequent undesignated statutory references are to the Business and Professions Code.

5. The Trial Court's Summary Judgment Ruling

Mehrian moved for summary judgment on the grounds that: (1) Mehrian did not cause WFG's decision to roll Pedram's hierarchy down to him rather than up to Daldumyan; (2) Daldumyan's claims were barred under principles of res judicata as a result of the Arbitration; and (3) Mehrian's challenged statements were protected by the "common-interest" privilege established by Civil Code section 47, subdivision (c). The trial court granted the motion based on the lack of evidence of causation. The court therefore did not reach the issues of res judicata or the common-interest privilege.

The trial court first sustained Mehrian's hearsay objections to evidence that Daldumyan offered in the form of testimony from depositions in the Arbitration. Having excluded that testimony, the court concluded that Daldumyan's remaining evidence was insufficient to raise a triable issue of material fact as to whether Mehrian was the cause of the transfer of Pedram's hierarchy to Mehrian or of WFG's termination of its contract with Daldumyan. The court concluded that, "[a]t most," the evidence showed that Mehrian "was asked to give feedback on people [Daldumyan] wanted to transfer from [Mehrian] to [Daldumyan], and that [Mehrian] gave such feedback."

DISCUSSION

1. The Trial Court's Ruling on Mehrian's Hearsay Objections to Testimony From the Arbitration

In sustaining Mehrian's hearsay objections, the trial court relied on the Court of Appeal decision in *Gatton v. A.P. Green Services, Inc.* (1998) 64 Cal.App.4th 688 (*Gatton*). The court in *Gatton* held that deposition testimony from another case was not functionally equivalent to affidavits offered in opposition to

summary judgment and was therefore inadmissible hearsay. (*Id.* at pp. 694–695.)

On February 28, 2019, our Supreme Court decided *Sweetwater Union High School v. Gilbane Building Company* (2019) 6 Cal.5th 931 (*Sweetwater*). In that case, the court held that testimony from a grand jury proceeding in another case was "the equivalent of a testifying witness's declaration under penalty of perjury" for purposes of opposing a motion to strike under Code of Civil Procedure section 425.16 (the "anti-SLAPP" statute). (*Sweetwater*, at p. 943.) The court concluded that such testimony under oath was "at least as reliable as an affidavit or declaration," which the anti-SLAPP statute permits. (*Id*. at pp. 941, 943.) The court expressly overruled *Gatton* on this point. (*Id*. at p. 944, fn. 8.)

Although the court's ruling in *Sweetwater* concerned evidence offered in opposition to an anti-SLAPP motion rather than to a summary judgment motion, the same analysis applies. Both section 425.16 (governing the anti-SLAPP procedure) and section 437c (governing summary judgment) of the Code of Civil Procedure permit the use of affidavits to oppose a motion. In *Sweetwater,* the court explained that "the statute governing summary judgment motions reflects a similar understanding of the role played by affidavits and declarations." (*Sweetwater*, *supra*, 6 Cal.5th at p. 945.) The court also overruled *Gatton,* which considered the admissibility of prior deposition testimony in the context of a summary judgment motion. (*Sweetwater*, at p. 944, fn. 8.) Thus, following *Sweetwater,* a court considering a summary judgment motion "may consider statements that are the equivalent of affidavits and declarations because they were

made under oath or penalty of perjury in California." (*Id*. at p. 945.)

The deposition testimony that Daldumyan offered from the Arbitration meets this standard. Here, the trial court ruled prior to the decision in *Sweetwater*. However, the point regarding the admissibility of the hearsay statements is moot as the deposition testimony does not create a triable issue.

In light of the decision in *Sweetwater*, we consider the evidence that the trial court excluded on hearsay grounds. As discussed below, even when that evidence is considered, Daldumyan failed to provide evidence sufficient to defeat summary judgment.

2. Daldumyan Failed to Provide Evidence Showing Any Triable Issue of Material Fact

A. *Standard of Review*

We apply a de novo standard of review to the trial court's summary judgment ruling. We interpret the evidence in the light most favorable to Daldumyan as the nonmoving party, and resolve all doubts about the propriety of granting the motion in his favor. (*Lonicki v. Sutter Health Central* (2008) 43 Cal.4th 201, 206.) We consider all the evidence before the trial court except that to which objections were made and properly sustained. (*Pipitone v. Williams* (2016) 244 Cal.App.4th 1437, 1451–1452.) Although we independently review Mehrian's motion, Daldumyan has the responsibility as the appellant to demonstrate that the trial court's ruling was erroneous. (See *Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359, 372.)

In exercising our independent review, we apply the standards applicable to summary judgment motions. A defendant moving for summary judgment has an initial burden of

production to make a prima facie showing that there are no triable issues of material fact. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850–851.) Once the moving party does so, the burden of production shifts to the opposing party to show the existence of material disputed facts. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar*, at pp. 850–851.) The opposing party must make that showing with admissible evidence. (Code Civ. Proc., § 437c, subd. (d); *Jambazian v. Borden* (1994) 25 Cal.App.4th 836, 846.)

B. *Daldumyan Submitted Insufficient Evidence of Causation*

The elements of the tort of intentional interference with contractual relations are: "(1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of the contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126 (*PG & E*).) To maintain a claim under section 17200, a private plaintiff must show that he or she has "suffered injury in fact and has lost money or property as a result of the unfair competition." (§ 17204.)

Thus, each of Daldumyan's claims requires proof of causation. (See *Franklin v. Dynamic Details, Inc.* (2004) 116 Cal.App.4th 375, 391–394 (*Dynamic Details*) [plaintiff failed to provide sufficient evidence that the defendant's e-mails were the cause of disruptions in the plaintiff's contractual relationships]; *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 322 (*Kwikset*) [plaintiff alleging a violation of section 17200 must show an "economic injury" that "was the result of, i.e., *caused by,*

the unfair business practice . . . that is the gravamen of the claim"].) While Mehrian's challenged conduct need not be the sole cause of Daldumyan's claimed injury, it must at least be a substantial factor. (See *Dynamic Details*, at p. 391.)

Daldumyan failed to submit evidence sufficient to show a triable issue on the element of causation. Daldumyan claims that Mehrian's conduct caused losses from WFG's breach of its contract with Daldumyan in two respects: (1) rolling Pedram's hierarchy down to Mehrian rather than up to Daldumyan; and (2) WFG's subsequent termination of the contract. The evidence Daldumyan submitted in opposition to Mehrian's summary judgment motion cannot support a reasonable inference that Mehrian's conduct caused either event.

i. *The roll-down*

Daldumyan claims that the decision to roll down Pedram's hierarchy to Mehrian breached Daldumyan's contract with WFG. He relies on the results of the Arbitration for his contention that there is "no dispute . . . that actual breach or disruption of the contractual relationship occurred."

Daldumyan claims that Mehrian caused the roll-down by "working with WFG employees and executives to secure the improper roll-down of Pedram's hierarchy to himself," including "providing false information to, and colluding with, WFG." However, the only evidence that Daldumyan provided of communications between Mehrian and WFG concerning the roll-down concerned communications *after* WFG had already made the decision to roll the hierarchy down to Mehrian rather than up to Daldumyan.

Pedram's contract was terminated on November 16, 2011. Pedram's hierarchy automatically rolled up to Daldumyan when

that occurred. There is no dispute that the decision to change that arrangement and roll the hierarchy down to Mehrian instead was made at least by November 23, 2011.[4]

Daldumyan submitted evidence of an e-mail six days later, on November 29, 2011, from Mehrian to Nguyen enclosing a chart identifying various people in the hierarchy and stating that "[o]nce again coach, I'm not looking to do a 25/75 split with Artak." Later e-mails with a similar chart went to others within WFG, including Davies. Within a few days, various associates in the hierarchy also sent e-mails to Nguyen and other WFG executives supporting the roll-down, on which Mehrian was apparently copied.

These communications all concerned controversy about the roll-down *after* it had occurred. During that time, there were ongoing communications concerning a potential compromise agreement to split the associates in Pedram's downline between Daldumyan and Mehrian. Daldumyan acknowledges that Mehrian's comment about a "25/75 split" in his November 29th e-mail referred to "a proposal to split Pedram's hierarchy between [Daldumyan] and [Mehrian] as a compromise to the hierarchy roll-down dispute." These discussions lasted for months, including various communications between WFG executives and

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[4] Mehrian submitted an e-mail of that date from John Joseph, the chief administrative officer of WFG, confirming the plan to "move the Associates currently direct to Pedram . . . from Pedram and direct to Jonathan Mehrian." Daldumyan's declaration states that Pedram's hierarchy was moved from him to Mehrian "a few days" after Pedram's contract was terminated.

Mehrian, Daldumyan, and others attempting to resolve which associates would move.

Daldumyan also submitted general deposition testimony by Davies from the Arbitration in which Davies said that he had about 10 conversations with Mehrian concerning Daldumyan. However, Davies did not say when these conversations occurred and could only remember one such conversation specifically. His testimony about that conversation suggests that it occurred *after* Pedram's downline had already been transferred to Mehrian. Davies recalled that he and Mehrian discussed associates that Daldumyan "wanted a transfer over to him." Davies further recalled that Mehrian was cooperative with the transfer.

The only evidence that Daldumyan offered concerning influence brought to bear on WFG's decision to roll down Pedram's hierarchy to Mehrian was Nguyen's testimony that *he* recommended the transfer. Nguyen testified that he based his recommendation on feedback that he received from persons in Pedram's downline. He did not say that he spoke to Mehrian about the issue or that Mehrian had any involvement in the decision.

Thus, none of the evidence that Daldumyan submitted shows that Mehrian was involved in the roll-down decision before it was made. While the evidence could support an inference that Mehrian engaged in advocacy to keep persons within his hierarchy *after* the transfer had occurred, that does not show that Mehrian caused the transfer.

In the absence of evidence that Mehrian was even involved in the decision to transfer Pedram's hierarchy, the argument that his conduct was a substantial factor in that decision is mere speculation. Nothing in the record contradicts testimony

submitted by Mehrian that "no statements, other representations, or conduct by [Mehrian] caused WFG to effect the transfer of [Pedram's] hierarchy to [Mehrian]." (See *Dynamic Details, supra,* 116 Cal.App.4th at p. 393 [e-mails that accused the plaintiff of intellectual property violations were not a substantial factor in the termination of the plaintiff's contract as a sales representative because they did not contradict the principal's declaration that he decided to terminate the contractual relationship for other reasons].)

Nor was Mehrian's after-the-fact advocacy itself a cause of the alleged contract breach. Accepting the benefits of a breach that has already occurred is different from inducing the breach. The tort of intentional interference with contract is based on the principle that "the contractual relationship is at the will of the parties, not at the will of outsiders." (*PG & E, supra,* 50 Cal.3d at p. 1127.) An outsider does not cause a disruption to a contractual relationship that a party to the contract has itself already brought about. (See *Dryden v. Tri-Valley Growers* (1977) 65 Cal.App.3d 990, 997 [proximate cause was absent where judicially noticed facts established that "performance of the disputed contracts had been abandoned and discontinued" by one of the parties months before the alleged interference].) Daldumyan has provided no authority finding causation in such circumstances.[5]

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[5] Daldumyan also claims that Mehrian's conduct "to keep the hierarchy to himself after [Daldumyan] requested that WFG follow protocol" was unfair conduct under Business and Professions Code section 17200. The evidence arguably could support a conclusion that Daldumyan "has lost money or

ii. *Termination of Daldumyan's contract*

The only evidence that Daldumyan provided of any involvement by Mehrian in the sequence of events leading to WFG's decision to terminate its contract with Daldumyan is testimony suggesting that Mehrian provided information leading to Transamerica Financial's investigation of Daldumyan. Daldumyan submitted testimony by a vice-president of WFG stating that a conversation between Davies and Mehrian started the investigation. Daldumyan also provided testimony from several WFG employees responsible for compliance and regulatory issues suggesting that Davies provided information leading to the investigation.

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property" from Mehrian's advocacy to keep associates in his hierarchy if Mehrian benefited from higher commissions as a result. (Bus. & Prof. Code, § 17204; see *Kwikset, supra,* 51 Cal.4th at p. 325 ["If a party has alleged or proven a personal, individualized loss of money or property in any nontrivial amount, he or she has also alleged or proven injury in fact"].) But permitting a claim under such a theory would require a conclusion that alleged interference with contract may be actionable as "unfair" under Business and Professions Code section 17200 even if it is not tortious under the common law. The conclusion is doubtful. (See *Dynamic Details, supra,* 116 Cal.App.4th at p. 394 [affirming summary adjudication of the plaintiffs' § 17200 claim based upon their concession that the claim was dependent on their other causes of action for libel and tortious interference for which the evidence was insufficient].) In any event, we need not consider that issue because, as discussed below, the evidence of Mehrian's post-breach advocacy is also insufficient to show malice under the "common-interest privilege." (Civ. Code, § 47, subd. (c).)

The connection between the vague information that Mehrian provided to WFG and WFG's ultimate decision to terminate its contractual relationship with Daldumyan is far too attenuated to sustain any inference that Mehrian caused WFG to breach Daldumyan's contract. The evidence that Daldumyan provided does not show any link between the information that Mehrian provided and the grounds for WFG's decision to terminate the contract.

Daldumyan must show a link not only between Mehrian's conduct and the termination, but between Mehrian's conduct and the contract *breach*. If Mehrian provided information that actually justified the termination of Daldumyan's contract under its terms, that information could not be the cause of a breach.

Daldumyan claims that the information Mehrian provided to Davies was false. But Daldumyan did not submit any evidence of what specific *false* information Mehrian provided or how it allegedly influenced WFG's decision to terminate Daldumyan's contract.

Daldumyan did not even attempt to show *how* the contract was breached. As mentioned, Daldumyan argues that it is undisputed that "actual breach or disruption of the contractual relationship occurred," citing the results of the Arbitration.[6]

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[6] Mehrian's summary judgment motion did not challenge the element of breach, and Daldumyan therefore did not need to provide evidence to establish that element. However, Mehrian's motion did challenge causation, and Daldumyan therefore was required to provide evidence sufficient to show that Mehrian's conduct *caused* the claimed breach. The nature of the alleged breach may of course be relevant to that showing.

Daldumyan does not argue that findings from the Arbitration bind Mehrian, who was not a party to that proceeding. In the absence of binding factual findings, Daldumyan could not simply rely on the Arbitration ruling to prove breach.[7]

Moreover, even if the Arbitration decision were admissible against Mehrian, it does not help to establish any link between Mehrian's alleged conduct and WFG's decision to terminate Daldumyan's contract. The arbitrators found that WFG breached its contract with Daldumyan by terminating the contract solely because of Transamerica Financial's decision to terminate Daldumyan's Field Representative Agreement. The arbitrators rejected WFG's argument that it could rely on Transamerica Financial's decision because Transamerica Financial was a " 'preferred company' " under the AMA. The arbitrators did not decide whether Transamerica Financial's decision to terminate its relationship with Daldumyan breached its own contract with Daldumyan. As mentioned, the arbitrators specifically explained that "[t]he contract between [Transamerica Financial] and [Daldumyan] is not within the scope of this arbitration."[8]

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[7] While the Arbitration decision itself is a proper subject of judicial notice, the truth of the findings in the decision is not. (*Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1564–1566.)

[8] Indeed, some of the arbitrator's findings suggest that Transamerica Financial might have had grounds to terminate its contract with Daldumyan. For example, the arbitrators noted that Daldumyan did not report his investment and involvement in the Golden State Bank "in writing as required by [Transamerica Financial] and FINRA," and that Daldumyan's failure to disclose a bank lien against him "was not a ground of

Thus, nothing in the Arbitration decision establishes a causal link between the grounds for Transamerica Financial's decision to terminate its relationship with Daldumyan and WFG's breach. Any information that Mehrian might have provided in connection with the investigation leading to Transamerica Financial's decision is therefore irrelevant to the breach that the Arbitration established.

Daldumyan also attempts to link Mehrian to the termination of Daldumyan's contract by showing that he benefited from it. Daldumyan's theory is that WFG's claimed ground for terminating his WFG contract was pretextual, and that WFG's real reason for terminating the relationship with Daldumyan was to eliminate the controversy over the transfer of Pedram's downline to Mehrian. Daldumyan claims that "WFG and [Transamerica Financial] began an 'investigation' based on false information provided by [Mehrian], to find a basis to terminate and divest [Daldumyan], thereby silencing the dispute."

Again, Daldumyan did not submit evidence to support this theory. Daldumyan cites evidence that WFG did not conduct its own investigation and instead simply relied on Transamerica Financial's decision to terminate the Field Representative Agreement. But that evidence is completely consistent with the testimony that Mehrian offered in support of his summary judgment motion explaining that WFG relied on Transamerica Financial's decision because it believed that Transamerica

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termination by WFG; it was a ground of termination by [Transamerica Financial]."

Financial's decision itself showed a breach of Daldumyan's contract with WFG. It is also consistent with WFG's similar defense at the Arbitration.

Thus, none of the evidence that Daldumyan provided in opposing summary judgment showed a causal link between Mehrian's conduct and the termination of Daldumyan's WFG contract. Daldumyan therefore could not base his claims for intentional interference of contract or unfair competition on that alleged breach.

C. *Daldumyan Submitted Insufficient Evidence of Malice*

Civil Code section 47, subdivision (c) establishes a privilege for communications "without malice, to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information." This statutory privilege codifies the common law "common-interest" privilege. (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 727.) That privilege applied to a "narrow range of private interests," such as where "[t]he interest protected was private or pecuniary; the relationship between the parties was close, e.g., a family, business, or organizational interest; and the request for information must have been in the course of the relationship." (*Ibid.*)

Mehrian argues that this privilege applies to the communications that are the basis for Daldumyan's claims.[9] We agree.

Application of the common-interest privilege involves a two-step analysis. The defendant bears the initial burden of demonstrating that the communication at issue was made upon a privileged occasion, and the plaintiff then has the burden to prove that the defendant made the statement with malice. (*Lundquist v. Reusser* (1994) 7 Cal.4th 1193, 1208.)

Mehrian provided sufficient evidence to show that the privilege applies to the communications at issue. Mehrian had a personal business interest in the allocation of Pedram's hierarchy following the termination of Pedram's contract. WFG had an institutional interest in how that hierarchy was assigned. As a member of Daldumyan's hierarchy, Mehrian also had an interest in Daldumyan's compliance with the terms of his contract with WFG. Of course WFG also had an institutional interest in Daldumyan's compliance.

The common-interest privilege has been applied in the context of a variety of business and professional relationships. (See, e.g., *Taus v. Loftus* (2007) 40 Cal.4th 683, 720–721 [privilege applied to a statement made at a professional conference attended by other professionals that was related to

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[9] Mehrian argued below that the privilege applies. Thus, we may affirm on that ground even though the trial court did not reach the issue. (*County of Solano v. Handlery* (2007) 155 Cal.App.4th 566, 572 [" 'If summary judgment was properly granted on any ground, we must affirm regardless of whether the court's reasoning was correct' "].)

the subject matter of the conference]; *Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 899–901, 930 [medical providers shared a common interest in the business practices of a competing provider with an attorney who wrote a letter requesting an investigation into a potential conflict of interest by the chairman of the board of the competing provider]; *Klem v. Access Ins. Co.* (2017) 17 Cal.App.5th 595, 617–618 [insurer and the Department of Motor Vehicles had a common interest in the reporting of total loss salvage vehicles].)

Of particular significance here, the interest has been applied in the employment context to communications affecting both employers and employees. (See *King v. United Parcel Service, Inc.* (2007) 152 Cal.App.4th 426, 440–441 [employer and employees have a common interest "in protecting the workplace from abuse"]; *Deaile v. General Telephone Co. of California* (1974) 40 Cal.App.3d 841, 846 [company and employees were " 'interested' " persons for purposes of the common-interest privilege with respect to the reasons for an employee's forced retirement].) Although Mehrian is an independent contractor and not an employee of WFG, he has an interest similar to that of an employee in his coworkers' compliance with company policies, particularly as that compliance affects his own work relationships. Mehrian therefore met his burden to show that the common-interest privilege applies to the challenged communications.

Daldumyan did not meet his burden to provide sufficient evidence that Mehrian acted with malice. The malice "referred to by the statute is actual malice or malice in fact, that is, a state of mind arising from hatred or ill will, evidencing a willingness to vex, annoy or injure another person." (*Agarwal v. Johnson* (1979)

25 Cal.3d 932, 944.) Malice may not be inferred from a challenged communication itself. (Civ. Code, § 48.)

Mehrian's advocacy to keep associates within his hierarchy after Pedram's contract was terminated does not suggest malice. As discussed above, there is no evidence that Mehrian engaged in such advocacy before WFG had already made the decision to transfer the hierarchy to Mehrian. Mehrian's efforts to retain the benefits of the transfer may have been self-interested, but Daldumyan identifies no evidence that they were motivated by hatred or ill-will or a desire to injure Daldumyan.

In contrast, Mehrian provided evidence that WFG believed that it had authority to order the transfer under the applicable contract provisions. Although the arbitrators rejected this defense, WFG's belief that it had a contractual right to direct the transfer is inconsistent with the conclusion that Mehrian acted maliciously in defending WFG's decision.

Daldumyan also did not provide evidence that Mehrian provided false information leading to WFG's decision to terminate Daldumyan's contract. As discussed above, Daldumyan does not even identify any particular false information that Mehrian allegedly provided, much less demonstrate its falsity with evidence.

Each of Daldumyan's claims is dependent upon communications that were privileged under Civil Code section 47, subdivision (c). In the absence of evidence of malice, those claims were therefore properly adjudicated against Daldumyan.

3. Daldumyan Has Not Identified Any Reversible Error in the Trial Court's Ruling on His Evidentiary Objections

Daldumyan claims that the trial court erred in overruling his objections to Mehrian's evidence on the ground that the objections were untimely and not in the proper form. We need not consider whether the court's ruling was erroneous because Daldumyan has not identified any prejudice from the ruling. Specifically, he does not point to any particular evidence that the court excluded that could affect whether summary judgment was properly ordered.

This court may not reverse for an erroneous decision concerning the admission or exclusion of evidence unless the decision "resulted in a miscarriage of justice." (Evid. Code, §§ 353, 354.) An appellant has the responsibility to show such prejudice. (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 282 [appellants failed to "demonstrate how any claim of error in the trial court's exclusion of evidence would have made any difference in the outcome"].) Daldumyan has not done so here.

DISPOSITION

The judgment is affirmed. Mehrian is entitled to his costs on appeal.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.